

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2101 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

GOPIPURA GROUP INDUSTRIES ASSOCIATION

Versus

DIST. DEVELOPMENT OFFICER

Appearance:

MR RN SHAH for Petitioners
MR AH MEHTA WITH MR MB GANDHI for Respondent No. 5
MR HR LATHIGARA WITH MR UM SHASTRI for Respondent No.3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 07/04/98

CAV JUDGEMENT

This petition under article 226 and 227 of the Constitution, filed by the Gopipura Group Industries Association through its 11 members, challenges the order

dated 12.3.98 passed by the State of Gujarat in the Panchayat, Rural Housing Finance and Rural Development Department, rejecting the petitioner's application for payment of lumpsum contribution in lieu of octroi and confirming the levy and imposition of octroi by the Gopipura Gram Panchayat (hereinafter referred to as the Gram Panchayat) and for quashing and setting aside the resolution passed by the Gram Panchayat for giving octroi to respondent no.5 Niranjan Mukundrai Joshi.

2. The facts leading to filing of the present petition, briefly stated, are as under:-

2.1. Gopipura and other villages in the group are situated in Tal. Halol of District Panchmahals. By resolution no.75 dated 29.3.97, the Gram Panchayat resolved to levy and collect octroi on the goods brought within its local limits. An advertisement was issued in the local newspaper 'Western Times' on 9.4.97 inviting objections against the levy of octroi. Thereafter by resolution no.13 dated 23.5.97 the Gram Panchayat finally resolved to levy octroi and the public notice to that effect was given in the Western Times on 24.5.97. Thereafter by resolution no.21 dated 13.6.97 the Gram Panchayat decided to collect octroi by giving the contract for the same i.e. octroi ijara. Another public notice for inviting offers for that purpose was issued in the Western Times on 5.7.97 and ultimately by order dated 11.7.97 the Gram Panchayat gave octroi ijara to respondent no.5 for an amount of Rs.5,19,000/- per year for a period of 2 years.

2.2. On 12.7.97, respondent no.5, Octroi Contractor, filed Regular Civil Suit No.373 of 1997 in the court of the learned Civil Judge (SD) Godhra for a permanent injunction and declaration that respondent nos.1 to 4 have no authority to cancel octroi ijara on 11.7.97. Respondent no.5 i.e. plaintiff in the suit also prayed for a temporary injunction to restrain the authorities from interfering with the plaintiff in collection of octroi. Ad-interim injunction was granted by the learned Civil Judge (SD) Godhra on the same day.

2.3. The petitioners, who are members of the petitioner - association and are carrying on their manufacturing activities within the local limits of Gopipura Gram Panchayat filed an application in the above suit for being joined as party-defendants on the ground that no publicity was given to the previous notices of the Gram Panchayat either for levy of octroi or for giving the contract for collection of octroi and that everything was

done by the persons running the Gram Panchayat and respondent no.5 in a hush hush manner by not getting the public notice published in leading newspapers in the area but by publishing the same in an obscure newspaper called Western Times which does not have wide circulation. Hence the petitioners could not lodge their objections. It is further submitted that there was no occasion for filing the suit but in order to preempt the petitioners from instituting appropriate legal proceedings and to preempt the petitioners from getting any relief from the court of law or the authorities under the Act, the Octroi Contractor (Respondent no.5) filed the above suit and got an ex-parte ad-interim injunction on 3.1.98, however, the Trial Court rejected the petitioners application for being joined as party defendants.

2.4. It is further submitted that the petitioners had sent their applications to Sarpanch and Talati Cum Mantri of the Gram Panchayat for giving lumpsum amount in lieu of octroi on 12.8.97 and 2.9.97, that copies were sent to the Taluka Development Officer, Halol and the District Development Officer, Panchmahals at Godhra and that further communications in this behalf and further letters were written by the petitioners to District Development Officer on 11.12.97, 7.1.98 and 4.2.98. Copies of all these applications and letters are produced on the record of this petition.

2.5. Since on the one hand these applications were not at all considered by the respondent authorities and on the other hand the petitioners application for being joined as party defendants in the contractor's suit has been dismissed by the learned Civil Judge (JD) Godhra by his order dated 3.1.1998, the petitioners were constrained to approach the State Government by filing revision application under Section 259 of the Gujarat Panchayats Act, 1993. The State government had granted temporary ad-interim injunction against Collection of octroi by the Panchayat or the contractors as the petitioners were ready and willing to pay lumpsum amount in lieu of octroi. By the said ad-interim order dated 17.2.98 the State Government also directed the Gram Panchayat to submit the petitioners' application for payment of lumpsum contribution in lieu of octroi to the State Government alongwith its proposal but after hearing the parties, the State Government dismissed the revision application on 12.3.98.

2.6. The petitioners have now approached this court by filing this petition under Articles 226 and 227 of the Constitution of India for the aforesaid reliefs.

3. At the hearing of the petition Mr.R.N.Shah, learned counsel for the petitioner strenuously urged that the Panchayat had not followed the legal procedure before deciding to levy and collect octroi or before entrusting the contract for collection of octroi to respondent no.5. It was submitted that the publication of notice in an obscure newspaper like the Western Times cannot be treated as publicity in the eye of law. It was further submitted that publication of the notice in Western Times for giving the Octroi Ijara and thereafter filing of the civil suit by respondent no.5 on 12.7.97, a public holiday - go to show that the members of the Panchayat and particularly the Sarpanch thereof and the Contractor - Respondent no.5 were acting in collusion for the benefit of the contractor rather than the benefit of the village people as a whole or in accordance with law. It was further submitted that the applications sent by the petitioners to the Gram Panchayat, the Taluka Development Officer and the District Development Officer expressing willingness to pay lumpsum amount in lieu of octroi were sent on a number of occasions between 12.8.97 and 4.2.98 but the respondent Gram Panchayat was not even prepared to admit having received such applications and that is the length to which the Sarpanch is going to help the Octroi Contractor. It was further submitted that the plight of the petitioners is further aggravated by the Civil Court also rejecting the petitioners application for being joined as a party.

4. On the other hand the learned Counsel for the Sarpanch of the Gram Panchayat and the learned Counsel for the Octroi Contractor both appearing on caveat submitted that the State Government had rightly rejected the petitioners' revision application as the petitioners' so-called applications for payment of lumpsum amount in lieu of octroi were in any case not in accordance with the provisions of Gujarat Panchayats (Payment of Lumpsum Contribution by Factories in Lieu of Taxes) Rules, 1964 (hereinafter referred to as the "Rules").

It was further submitted that the public notices were issued through the publication in the Western Times which is a newspaper having wide circulation and that therefore there was no illegality and that in any view of the matter the civil suit is still pending before the trial Court and, therefore, this court may not preempt the decision in the said suit.

5. Having heard the learned Counsel for the parties, it appears to the court that in view of the findings

given by the State Government that the Gram Panchayat had followed the legal procedure for levying and collecting octroi, in view of the limitations on the scope of power of judicial review of administrative action under Article 226, wherein this Court ordinarily does not entertain disputed questions of fact and in view of the pendency of Civil Suit No.373/97 on the same subject matter, this Court is not inclined to entertain this petition. Nonetheless certain directions are required to be given in exercise of the powers of this court under Articles 226 and 227 of the Constitution in order to see that the claims of the petitioner - industries are not left unattended to by the authorities and also to see that the petitioners do get a hearing before the civil court in the suit filed by respondent no.5 contractor.

It would therefore be just and proper to direct and it is directed accordingly, that in case the petitioners make the application/s in writing to Gopipura Gram Panchayat within 60 days from the commencement of financial year 1998-99 for payment of lumpsum contribution in lieu of octroi in accordance with the provisions of rule 3 of the Rules, the Gopipura Gram Panchayat shall consider the same in accordance with the provisions of rule 4 and thereafter take further appropriate action in accordance with the Rules. The respondent Authorities shall accordingly consider the petitioners' application/s for payment of lumpsum contribution in lieu of octroi.

6. Since it is the case of the petitioners that publicity was not given to the public notice issued by the Gram Panchayat inviting objections against levy of octroi, the learned Trial Judge ought not to have rejected the petitioners' application on the ground that the petitioners had not lodged any objections at the relevant time. It is true that there is no specific prayer in the petition for quashing the aforesaid order dated 3.1.98 passed by the Trial Court because the petitioner has concentrated more on challenging the order of the State Government in revision and have also pressed their application for payment of lumpsum contribution in lieu of octroi. However, since this court has declined to examine the merits of the order of the State Government on the ground that civil suit on the subject matter is pending before the trial Court and since the question whether adequate publicity was given to the public notice would be essentially a question of fact, it would be in the fitness of things to set aside the order dated 3.1.98 passed by the Trial Court rejecting the petitioners application for joining as party defendants

in the above suit and to grant the application in exercise of the powers under Article 227 of the Constitution. As the petitioners are vitally affected by the ad-interim injunction and would be vitally affected by the outcome of the suit, it would therefore be necessary to grant, in exercise of the powers of this court under Article 227 of the Constitution, application Exh.16 (Annexure C to the petition). Accordingly, the court of learned Civil Judge (JD) Godhra is directed to permit the petitioners to be joined as defendants in Regular Civil Suit No.373/97 and thereafter to give them an opportunity of contesting the application for interim injunction filed by the plaintiffs in the said suit and also the entire suit.

7. The petition is accordingly disposed of in terms of the aforesaid directions and observations.

jitu